IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3344 of 2002
with
SPECIAL CIVIL APPLICATION Nos.9753, 9754, 9756, 9758, 9759, and 9760 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FOOD CORPORATION OF INDIA EMPLOYEES' ASSOCIATION
Versus
FOOD CORP. OF INDIA

Appearance:
1. Special Civil Application No. 3344 of 2002
MR TR MISHRA for Petitioner No. 1
MR SS PANESAR for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/09/2002

COMMON ORAL JUDGEMENT

Rule. Mr Panesar, learned counsel waives service

of Rule for the respondents. In the facts and circumstances of the case, the petitions are taken up for final disposal today.

2. In Special Civil Application No. 3344 of 2002 under Article 226 of the Constitution, the petitioner has challenged the validity of Regulation No. 60 of the Food Corporation of India (Staff) Regulations, 1971 in so far as the said Regulation prescribes the procedure for imposition of minor penalties and has also challenged Circular NO. 3 dated 11.9.2001 (Annexure "E" to the petition) in providing imposition of penalty on account of transit loss, storage loss and down gradation of foodgrains as being illegal, unreasonable and violative of principles of natural justice. The petitioner has also prayed for a direction to respondent No.4-Food Corporation to evolve scientifically norms about the percentage of losses on account of transit loss, storage loss and down gradation of foodgrains on the line of study undertaking by different institutions. The petitioner-union has also challenged the imposition of various types of penalties on the employees for such losses.

3. While issuing notice on 16.4.2002, this Court held that there was no merit in the challenge to the validity of Regulation No. 60. This Court also did not find anything objectionable in the impugned Circular No. 3 either. As regards the challenge to the various types of penalties imposed upon the employees of the Corporation, it was held that the same was based on no material. As regards the challenge to the norms adopted by the Corporation for normal losses of the foodgrains in transit and storage, this Court issued notice to the respondents in so far as the Corporation had adopted the norm of normal losses at 0.5%.

4. Aggrieved by the aforesaid order in so far as the petitioner-union's challenges were negatived at the threshhold, the petitioner preferred Letters Patent Appeal No. 199 of 2002. By order dated 25.6.2002, the Division Bench left it open to the petitioner to challenge the above circular No. 3, but on the concession made by the learned counsel for the petitioners upheld the order dismissing the challenge to Regulation No. 60 and other challenges. Consequently, six individual employees have filed separate petitions challenging the order of recovery/penalty passed against them. The said petitions are also being disposed of by this judgment.

5. In view of the subsequent developments which have taken place, it is not necessary to set out in detail all the facts leading to the filing of the petitions or various contentions raised in the petitions for the simple reason that the High Power Committee appointed by the Food Corporation of India as per the order dated 23.8.2001 (Annexure "H" to the petition) submitted a report and thereupon the Food Corporation has issued revised guidelines dated 7.6.2002 which are produced at Annexure "R1" to the affidavit in reply dated 24.7.2002 filed by Mr A Kannapiran, Regional Manager of the Food Corporation of India at Ahmedabad. It is stated in the said affidavit that while accepting the recommendations made by the above expert committee, the respondents with the concurrence of finance and approval of competent authority issued revised guidelines dated 7.6.2002 and decided that the norms for storage losses and transit losses cannot be fixed and that the existing system of investigation into each and every case of storage/transit loss considering various factors responsible for losses including the dereliction of duties by the officials and write off of such losses will continue without prejudice to the pending/contemplated disciplinary action for accountability of the loss and recovery thereof.

6. It is the specific stand in the reply affidavit that in the above revised guidelines dated 7.6.20002, the respondents have emphasized upon the competent authorities to write off the shortages and to take disciplinary actions for recoveries of loss by definitely looking into each and every aspect responsible for loss to see that innocent officials are not punished and delinquent officials do not escape accountability for unjustified losses to the respondents since the Food Corporation of India is striving on the food subsidy and it is the continuous endeavour to minimize the operation costs by controlling the operational losses and other overheads. If the storage/transit losses are not reduced, the subsidy would go up and it would put burden on the public exchequer and tax payers of the country. In the above circumstances, with the issuance of revised guidelines dated 7.6.2002, the earlier instructions for investigating loss beyond 0.5% i.e. circular No. 3 dated 11.9.2000 (Annexure "E") does not survive since the respondents are now required to thoroughly investigate all the cases of storage/transit loss for the charges of dereliction of duties, manipulative actions, pilferages etc. and recoveries have to be made only after following the procedure as per the FCI (Staff) Regulations by the competent authorities within the time schedule. Needless to add that the respondents have also decided to ensure

that investigation report should be given to the delinquent official. Even otherwise norms of losses cannot be fixed which could be taken as a right for the shortages whereas the losses depend upon controllable and uncontrollable factors which can be identified only after full investigation and responsibility is fixed by the concerned competent authorities and to take disciplinary actions in terms of FCI Regulations against all the delinquent officials found guilty.

7. In view of the aforesaid categorical stand of the respondent-Food Corporation of India whereby the previous instructions for taking disciplinary action against the employees by treating the transit/storage losses beyond 0.5% as misconduct per se are given up and, therefore, according to Mr Panesar for the FCI, the grievance raised in the main petition would not survive.

8. However, Mr TR Mishra, learned counsel for the petitioners has made the following submissions :-

(i) Even after 7.6.2002, the Regional Manager of the FCI at Ahmedabad has been issuing memoranda calling upon the employees to explain the abnormal storage and rail transit losses exceeding 0.5% in the foodgrains stocks in the deposits in charge of the concerned employees. In one case, the percentage of losses alleged is 0.97% in respect of rice [Mr BP Thackkar, AM(D) Memo dated 29.7.2002]. In another case, the percentage of losses alleged is 0.52% in respect of wheat [Mr VK Raval, AM(D) - Memo dated 28.8.2002]. The Regional Manager is, therefore, not abiding by the revised instructions dated 7.6.2002 and the inquiries are being initiated on the basis that the loss exceeding 0.5% is abnormal loss.

(ii) The penalty orders passed against the employees on the basis of the impugned circular No. 3 dated 11.9.2002 are still not withdrawn by the respondent-Corporation and the recoveries are still being effected on the basis of the orders passed prior to 7.6.2002.

(iii) The inquiries being made against the employees for recovery of storage/transit losses are not in compliance with the principles of natural justice, but only a show cause notice is given to which a written reply is filed by the employee, without the department examining departmental

witnesses or without evidence being led in support of the charge.

More importantly, Mr Mishra tried to impress that the stand of the Corporation treating the loss beyond 0.5% as abnormal loss is contrary to the material on record including the report of the expert committee appointed by the Food Corporation of India itself which has submitted its report dated 12.4.2002 which has set out in detail the possible causes for the storage loss, transit loss and the quality complaints. Reference is also made to the other material on record such as the circulars issued by the Gujarat State Civil Supply Corporation, the Central Warehousing Corporation, the provisions of Weight and Measures Act showing the difference of 1% in weight as permissible and on the basis of such material, it is contended that the loss below 1% can never be considered to be abnormal loss.

9. On the other hand, Mr Panesar, learned counsel for the respondent-Corporation has submitted that circular No. 3 dated 11.9.2000 in so far as it fixed the responsibility on the staff for all loses beyond 0.5% as abnormal losses does not survive in view of the revised instructions dated 7.6.2002, but it does not mean that the Corporation cannot hold inquiries for fixing the responsibility of the staff in charge of the foodgrains in question for the loss caused to the Corporation. It is submitted that the inquiries are initiated when the loss is detected and the employee is given an opportunity to meet with the charges levelled against him. It is further pointed out that out of the 8 penalty orders passed by the Corporation in respect of storage losses, the percentage of loss was almost 2% or more than 3% but the penalty orders are for withholding one increment without future effect (Special Civil Application Nos. 9753, 9756, 9759 and 9760 of 2002) whereas in Special Civil Application Nos. 9754 and 9758 of 2002 even where the loss was more than 3%, the penalty imposed is censure/recovery of Rs.5,000/- or Rs.8,000/- and, therefore, the petitioners are not justified in making any grievance against the orders of penalty. It is further pointed out that in some of the cases, the delinquents have already challenged the penalty orders before the appellate authorities (Special Civil Application No. 9753 and 9759 of 2002).

10. Having heard the learned counsel for the parties, it appears to the Court that the petitioner-Association and its members seem to be agitating about the stand of the Corporation treating the cases of losses beyond 0.5%

as cases warranting investigation and inquiries. It is true that in the report dated 12.4.2002 submitted by the expert committee consisting of the Chairman as well as three members of the Food Corporation of India, various possible causes for storage loss, transit loss and for quality complaints are discussed. As regards storage losses, it is stated, inter alia, as under in the said report :-

"The major factors for the storage loss is the loss of moisture contents besides the bird and rodent trouble, spillage of grain from the gunnies due to inadequate stitching/weak texture of the gunny. The period of storage is also responsible in the case of Rice and Paddy. As the factors responsible for the storage shortages vary from grain to grain and place to place, it has therefore not been possible for the Management to fix the norms upto which the same can be taken as the normal shortages.

It is a established fact that due to driage in moisture content, there will be a weight loss. Now question arises - what would be the weight loss for different commodities in storage for different period of storage in different type of storage on the basis of actual driage in moisture."

The Committee thereafter referred to the studies made by some of the institutes indicating the ratio of weight loss on account of moisture driage and the suggestions of the Associations for adoption of such ratios. However, the Committee observed that these studies cannot be uniformly adopted in FCI as climatic conditions differ from place to place. The type of storage during the period when the foodgrains are in abundance and the period of storage have also become very important. The Committee also noticed that the storage loss may also vary from area to area. In procurement areas if the stocks are stored and despatched after storage of one year, the storage loss or gain will be different and the same stocks if moved to other States where climatic conditions are different and stocks stored for another year, the degree of loss may be different. Hence, the storage loss/gain will vary from place to place depending upon the climatic conditions, period of storage after the procurement. The Committee concluded that various factors responsible for the storage loss/gain play vital role in different areas with

different degrees. Therefore, it would be difficult to prescribe uniform norms of loss for the country as a whole. The norms after scientific study may only be for an upper ceiling and every case has to be examined on its merit within those ceilings. In case, any norm is prescribed uniformly for the country as a whole, there is a danger that to that extent the advantage of loss can be misused by the field functionaries. The Committee, therefore, made recommendations for issuing suitable guidelines for investigation on case to case basis on merits as all responsible factors for losses will have to be looked into for assessing the loss considered as normal depending upon various factors. The Committee has also made certain suggestions with which we are not concerned for the purposes of the present petitions.

11. Atleast one thing which emerges from the aforesaid report is that the expert committee did not prescribe any percentage of loss as normal loss and, therefore, the petitioners are not justified in contending that loss upto 1% should be considered as normal loss. If the Corporation has decided that the losses beyond 0.5% should be a cause for concern and, therefore, warranting departmental inquiries to find out whether there was justification for such losses in excess of 0.5%, such stand of the Corporation cannot be considered to be arbitrary or illegal because even in such cases, the Corporation is going to hold inquiries and the concerned employees will get an opportunity to defend themselves. It is open to such employees to point out various factors responsible for the losses and which may indicate that the employee was not negligent or careless in the discharge of his duties.

12. The instructions contained in the Circular letter dated 7.6.2002, particularly paras 2 and 6 thereof provide as under :-

"2. During various surprise checks at the loading/unloading terminals and in the depots, it has been observed that the operational losses beyond 0.5% need to be thoroughly investigated for the chances of dereliction of duties, manipulative actions, pilferage etc. and recoveries be made after following set procedure as per FCI Staff Regulations by the competent authorities within the time schedule.

6. In view of the above position, the case of the Management for accountability of the transit and storage losses beyond 0.5% has to be

suitably emphasized in the courts, related to recovery proceedings of storage and transit looses and/or fixation of norms."

13. The learned counsel for the petitioners submits that there is no scientific data on record to show that the loss upto 0.5% should be considered as normal and that such figure should be revised to 1% because the Gujarat State Civil Supply Corporation (Annexure "M") and the Central Warehousing Corporation have been treating loss upto 1% as normal loss.

It is for the concerned Corporation to fix its own standards and expect the employees to be careful and vigilant in the matter of stocks of foodgrains so that minimum loss is caused to the concerned Public Corporation acting for the benefit of the community as a whole because the foodgrains are subsidized commodities and, therefore, loss of foodgrains during transit or storage will mean more burden on the subsidies. The understanding reached between FCI (respondent Corporation) and Central Warehousing Corporation on 26.7.1990 regarding storage losses (Annexure "O" to the petition), inter alia, stated as under :-

"(3) Pending the final decision on the norms to be fixed for storage losses the following arrangements were agreed to both by FCI and CWC.

(4) There will be no change in the following norms decided in the meeting taken by Food Secretary in May 1986.

Stock held in CWC's storage losses	Commodities	Percentage of admissible
Upto one year	Rice and Wheat	0.5%
Once to two year	Rice	0.75%
	Wheat	0.50%

In the respect of foodgrain stocks held in CWC's Warehouses over two years where the percentage of storage losses exceeds the aforementioned limits, the cases would be considered separately by FCI

and settled in consultation with CWC."

14. Even if according to the petitioner-association, the loss between 0.5 and 1%, is not abnormal, it is always open to the employees to point out that the percentage of loss is much less and to point out all the relevant causes or factors responsible for the losses. One can also not overlook the caution sounded by the export committee in its report dated 12.4.2002 that there was a danger that presenting a uniform norm for the country as a whole might lead to misuse by field functionaries. Loss beyond 0.5% is to alert the respondent Corporation to find out, whether there is anything amiss and to find out whether such loss is on account of controllable factors. The Corporation will also in due course of time make appropriate studies to correlate the findings in all such cases where the loss is between 0.5% to 1% to find out whether such losses are normal losses or not for the concerned area/foodgrain, but that cannot presently prevent the Corporation from initiating inquiries to ascertain the possible causes for losses in the course of transit or for storage losses.

15. Taking up individual cases, in Special Civil Application Nos. 9753, 9756, 9759 and 9760 of 2002, the penalty imposed is a minor penalty of stoppage of one increment without future effect. In Special Civil Application Nos. 9754 and 9758 of 2002, the penalty imposed is recovery of Rs.8,000/- and Rs.5,000/respectively. It is open to the petitioners in the above petitions to challenge the penalty orders before the appellate authorities. In fact, in Special Civil Application Nos. 9753 and 9759 of 2002, appeals are already filed by the concerned petitioners.

In view of the above, the Court does not propose to entertain the challenges against the orders of penalty which are the subject matter of the above petitions and, therefore, the same are dismissed on the ground that the petitioners have the alternative remedy available to them.

16. Mr Panesar states that certain recoveries were made pursuant to the orders passed in case of employees whose names are given in Annexure "C" to the petition (pages 63-64) and that out of those cases, penalties of recovery have been imposed only in 7 cases.

Even in such cases, it is open to the employees to file appeals to challenge the penalty orders.

17. Even in cases where the recoveries are still going on and the employees are aggrieved by the orders of penalty, the employees are at liberty to challenge the orders before the appellate authorities and in view of the fact that these petitions are being disposed of today, the authorities shall entertain the appeals on merits, if filed within one month from today.

The authorities shall also consider the applications/request for interim stay against recovery during pendency of the appeal and such applications/request for interim stay shall be considered within 15 days from the date of receipt of the applications.

18. Special Civil Application No. 3344 of 2002 is accordingly disposed of after recording the stand of the respondent-Corporation that Circular No. 3 dated 11.9.2000 does not survive in view of the revised guidelines dated 7.6.2002 and, therefore, there will not be any automatic recovery of any kind on the ground that the transit loss/storage loss is beyond 0.5%. However, the Corporation will hold inquiries in accordance with the FCI (Staff) Regulations, 1971.

Special Civil Application Nos. 9753, 9756, 9759, 9760, 9754 and 9758 of 2002 are disposed of in terms of paras 15 and 17 hereinabove.

Subject to the aforesaid directions, Rule is discharged with no order as to costs.

Interim relief granted earlier stands vacated.

(M.S. Shah, J.)

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